



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2018-0729]

RIN 1625-AA09

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, Fort Pierce, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the A1A North Causeway Bridge across the Atlantic Intracoastal Waterway (AICW), mile 964.8 at Fort Pierce, St Lucie County, FL. This action will eliminate the on-demand drawbridge openings. This action is intended to reduce vehicular traffic congestion and provide scheduled openings for the bridge.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Type USCG-2018-0729 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LT Samuel Rodriguez-Gonzalez, Sector Miami Waterways

Management Division, U.S. Coast Guard; telephone 305-535-4307, e-mail
Samuel.Rodriguez-Gonzalez@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code
AICW	Atlantic Intracoastal Waterway
FL	Florida
FDOT	Florida Department of Transportation

II. Background Information and Regulatory History

On August 2, 2019, we published a Notice of Proposed Rulemaking (NPRM) entitled “Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, Fort Pierce, FL” in the **Federal Register** (84 FR 37810). There were six comments received on the NPRM. This NPRM was preceded by two six-month test deviations published in the **Federal Register**. On August 30, 2018, the Coast Guard published the first Test Deviation entitled “Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, Fort Pierce, FL” in the **Federal Register** (83 FR 44233). The majority of the 113 comments received were in support of scheduled openings; however, most felt the bridge still opened too frequently. Subsequently, on March 21, 2019, the Coast Guard published an alternate Test Deviation entitled “Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, Fort Pierce, FL” in the **Federal Register** (84 FR 10411). The 33 comments received were in favor of the alternate test deviation.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. The A1A North Causeway Bridge across the AICW, mile 964.8 in Fort Pierce, St Lucie County, FL is a bascule bridge. It has a vertical clearance of 26 feet at mean high water in the closed position and a horizontal clearance of 90 feet. The bridge currently operates under 33 CFR 117.5. The Florida Department of Transportation (FDOT), who owns and operates the A1A North Causeway Bridge, has requested a rule to allow for scheduled drawbridge openings. There has been an increase in vehicular traffic over the bridge in recent years due to residential development along the beach. Placing the bridge on regularly scheduled openings will allow for more efficient and economical operation of the bridge given the volume of vehicular traffic crossing the bridge.

IV. Discussion of Comments, Changes and the Final Rule

During the first test deviation, the majority of 113 comments received were in support of scheduled openings. The test provided for the bridge to open on signal except that from 7 a.m. to 7 p.m. Monday through Friday, with the exception of Federal Holidays, Saturdays and Sundays, the draw will open three times per hour: on the hour, 20 minutes past the hour and 40 minutes past the hour. However, most felt the bridge was still opening too frequently. A review of the bridge tender logs did not support the claim that the bridge was opening too frequently. However, the logs did show the openings tended to be twice per hour as opposed to three times per hour. In addition, the majority of comments recommended scheduled openings during the evening and on weekends.

During the alternate test deviation, all 33 comments received were in favor of the alternate operating schedule that allowed for around the clock openings on the hour and half hour.

Based on the comments received from the test deviations, a NPRM was published to allow for around the clock openings on the hour and half hour. Of the six comments received, five were in favor of the scheduled openings. One commenter felt that a twice per hour opening was restrictive and may compromise safe navigation due to tidal flow. The commenter proposed two schedules that would restrict bridge openings during daylight hours and provide on demand openings at all other times. These proposals were similar to the first test deviation. The Coast Guard considered the options but determined that the proposed rule strikes the correct balance between relieving traffic congestion while ensuring safe navigation and therefore decided against adopting the proposed suggestions.

It is the Coast Guard's opinion that this rule meets the reasonable needs of marine navigation while having a positive effect on vehicular traffic. The rule allows for more efficient and economical operation of the bridge.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders and we discuss First Amendment rights of protesters.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the fact that vessels can still transit the bridge twice an hour and vessels of a certain size may also transit under the bridge without an opening at any time. Vessels in distress, public vessels of the United States and tugs with tows will be allowed to pass at any time.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5

U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble. The Coast Guard received no comments on this section.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, U.S. Coast Guard Environmental Planning Policy COMDTINST 5090.1 (series) and U.S. Coast Guard Environmental Planning Implementation Procedures (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f). We have made a determination that this action falls within a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under paragraph L49, of Chapter 3, Table3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the “For Further Information Contact” section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; and Department of Homeland Security Delegation No. 0170.1.

2. Amend § 117.261 by adding paragraph (n) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(n) *AIA North Causeway Bridge, mile 964.8 at Fort Pierce.* The draw shall open on the hour and half-hour.

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Dated: September 25, 2019.

Eric C. Jones,
Rear Admiral, U. S. Coast Guard,
Commander Seventh Coast Guard District.
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